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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,728	03/13/2001	Kannan Srinivasan	696.005	2029

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FERENCE & ASSOCIATES LLC
409 BROAD STREET
PITTSBURGH, PA 15143

EXAMINER

RETTA, YEHDEGA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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03/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/804,728

Applicant(s)

SRINIVASAN ET AL.

Examiner

Yehdega Retta

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to Request for Continued Examination filed December 24, 2008. Claims 1-20 have been canceled, and claims 21-40 have been added. Claims 21-40 are currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Dahm et al. (US 6,301,471).

Regarding claims 21-24 and 34, Dahm teaches predicting that a buyer/seller relationship is degrading comprising one of: determining if a customer is defunct and offering a dynamically optimized promotion to a customer. A churn likelihood being predicted based on the subscriber behavior information, such as usage behavior and providing an offer the customer for the purpose of retaining the customer (see col. 11 line 55 to col. 12 line 32, col. 13 lines 12-26 and col. 15 lines 25-49). No patentable weight is given to the second option, since it has been held that Language that suggest or makes optional but does not require steps to be performed or does

not limit a claim to a particular structure does not limit the scope of a claim or claim limitation (MPEP §2106 II C).

Regarding claims 25-33 and 35-39, Dahm teaches specifying a permissible defunct threshold (predetermined threshold values) at a manager console (see fig. 5A); and determining a probability that a customer will become defunct (see fig 5A); and determining a dynamically optimized promotion, wherein the dynamically optimized promotion is determined by sampling via a sampling engine (see fig. 6A-6F, fig. 7B, col. 3 line 53-58); the sampling comprising: determining a size of a sample, the sample comprising defunct customers (see col. 8 lines 44-54), wherein a customer is defunct if the probability that the customer will become defunct is greater than the permissible defunct threshold; offering different promotions to the defunct customers; and determining the dynamically optimized promotion based on responses to the different promotions offered to the defunct customers (see col. 8 lines 55-67, col. 9 lines 1-6, col. 11 line 55 to col. 12 lines 31 col. 15 lines 25-49); wherein the dynamically optimized promotion is propagated to a web site (col. 16 lines 6-18). No patentable weight is given to the limitation related to the marketing web site claimed as optional step in the independent claim 21.

Regarding claim 33, Dahm teaches segmenting the defunct customers into socioeconomic groups and only sampling customers belonging to certain socioeconomic groups (col. 10 lines 14-24).

Claims 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Herz et al. (US 2001/0014868 A1).

Regarding claims 37-39 Herz teaches determining if a customer is defunct; specifying a permissible defunct threshold (time period when customer is considered lost) (see [0246]), and determining a dynamically optimized promotion by sampling by determining the size of a sample; offering different promotions to the defunct customers; determining the dynamically optimized promotion based on responses to the different promotions offered to the defunct customers wherein the dynamically optimized promotion is propagated to the web marketing site wherein the sampling is run continuously (*see* [003], [0020] [0046] [0155]-[0158], [0165],[0166]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. U.S. Application No. US 2001/0014868.

Regarding claim 40, Herz teaches storing user profile attributes, including elapsed time period since the last purchase, elapsed time period between purchases (average), ranges elapsed period to previous offers, total amount spent over the past 6 month, maximum volume spent on a single shopping spree. Herz also teaches determining when a customer is considered lost (defunct). Herz further teaches providing most aggressive promotional offers possible to the one considered lost (defunct) and less aggressive discount to very loyal customer (see [0246]. Herz

Art Unit: 3622

also teaches dynamically optimized promotion changes by a particular amount (see [0073], [0236]-[0242]. It would have been obvious to one of ordinary skill in the art at the time of the invention for the most profitable customer (with high volume spending habit) of Hers to be considered lost, when the elapsed time period is lower than the elapsed time period of a less profitable customer. One would be motivated to keep the most profitable customer and provide most aggressive promotional offer, as taught in Herz.

Response to Arguments

Applicant's arguments with respect to claims 21-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nguyen et al. (US 2002/0002569 A1) teaches measuring the length of time a visitor views a web page.

Parker et al. (US 6912563 B1) teaches storing visitor path including an amount of time the visitors stayed on the operator contact-enabled web page.

Jammes et al. (US 6484149 B1) teaches preferred page rules including duration thresholds, each indicating a length of time a consumer views a web page.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR
/Yehdega Retta/
Primary Examiner, Art Unit 3622